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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

ADAMS, GREGORY W

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/569,489	Applicant(s) LABADIE, JEAN	
	Examiner GREGORY W. ADAMS	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-6, 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antonello (US 4,601,386) (previously cited) in view of Raiteri (US 6,183,190) (previously cited).

Antonello discloses a handling device comprising:

- a first vertically movable support O;
- a second vertically movable support O; and
- means (C3/L1-38) for synchronously driving first and second supports so that when one goes up an other goes down and vice versa;
- which handling device is characterized in that it further includes a first lateral upright ways V1, V2 and a second lateral upright ways V7, V8 separate from a first upright

Antonello discloses screws and does not explicitly disclose slideways.

Raiteri discloses a first lateral upright and a second lateral upright separate from a first upright each provided with slideways 51, first and second supports 53 being mounted on slideways 51, a device being adapted to leave free a gap between a second upright and a top box of a first stack at a predetermined height so that a top box of a first stack (li) is transferable directly to a second stack by lateral displacement at a

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more or less permanent level. Raiteri teaches the reduction in storage space over previous unstacker/restackers. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Antonello to include Raiteri's slideways to reduce the space requirements of unstacker/restrackers.

Claims 3 & 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antonello in view of Raiteri and further in view of Heston (US 5,971,700) (previously cited). Antonello does not disclose a cable, bottom idler pulleys, top idler pulleys & mobile shaft. Heston discloses a cable (C4/L40) each end connected to a respective support and which travels along a guide path including two bottom idler pulleys 63g, 63h each disposed at a base of a lateral upright and two top idler pulleys 63b, 63f each disposed at a top of a respective upright, a portion of a guide path situated between a bottom idler pulleys being substantially horizontal and disposed under said supports so that an assembly formed by two supports is partially surrounded by a guide path.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antonello in view of Raiteri and Heston and further in view of Sanders (US 4,021,019) (previously cited). Sanders discloses a pulley 70 connected to a threaded member meshing with an adjuster screw 121 rotatably mounted on a lateral upright 10a, an adjuster screw being connected to a drive means 125 accessible from a lateral upright to compensate for shocks to a cable lifting system such as the rise and fall of a ship creating cable slack and then full loading at tension. C1. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the

apparatus of Antonello to include a threaded member, adjuster screw and drive means, as per the teachings of Sanders, to prevent equipment damage should a cable under loading be relaxed and then re-tensioned.

Claims 10-13 & 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Antonello in view of Raiteri and further in view of Nishitani et al. (US 5,957,653) (previously cited). Antonello discloses control module for synchronized drive means. Nishitani et al. disclose sensing members 16, 16, 16 for sensing first stack height A and second stack height B, sensing members connected to a control module 26, which is adapted to control a synchronized drive means as a function of indications supplied by a sensing member 16, 16, 16. Nishitani et al. teach "To enable the carriage 20 to pick up articles, the boundary between the top layer and the subsequent layer must be at almost the same height as the carriage." C3/L40. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Antonello to include first and second sensing members for sensing first and second stack heights and connected to a control module, as per the teachings of Nishitani et al., to place Antonello's stack heights at approximately the same level.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Antonello in view of Raiteri and further in view of Hoffend, JR (US 6,634,622) (previously cited). Hoffend, JR discloses a safety stop 280 where "further configuration of the present invention provides a safety stop for terminating movement of batten upon detection of an obstacle in an intended travel path of the batten." Para. [0021]. Therefore, it would have been obvious to one having ordinary skill in the art at the time

the invention was made to modify the apparatus of Antonello to include a safety stop, as per the teachings of Hoffend, JR, to prevent injury when lifting large articles where there is potential for injury.

Response to Arguments

Applicant's arguments filed Sept. 30, 2008 have been fully considered but they are not persuasive. Raiteri discloses first and second lateral uprights 51, 51 positioned on first and second respective sides, and wherein first and second lateral uprights include slideways such that a movable support 53 "slides along" said lateral uprights. C4/L21-25. And, Raiteri discloses lateral upright slideways on a first side (left-hand-side of FIG. 4) and on a second side (right-hand-side of FIG. 4).

In response to applicant's argument that Antonello's supports can't support a stack, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The structure in claim 1 directed to supporting a stack is merely a movable support which Antonello discloses inasmuch as it is flat, horizontal and vertically movable surface which could easily receive a stack. Moreover, Raiteri's supports 58 clearly support a stack as well. And, whether a skilled artisan would replace Antonello's screws is irrelevant because element 61 is a support itself.

In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (that "the man skilled in the art

would not look to Raiteri's complex apparatus"), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant is respectfully requested to claim the novel features of its invention. It is not the examiners position that claims can not be recited in functional terminology, but that the novel features in functional terms are clearly disclosed in the cited prior art.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY W. ADAMS whose telephone number is (571)272-8101. The examiner can normally be reached on M-Th, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on (571) 272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory W Adams/
Primary Examiner, Art Unit 3652